

SA2005RF0152

December 28, 2005

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814
Attn: Tricia Knight, Initiative Coordinator

RECEIVED
DEC 29 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Community College Governance and Funding Stabilization. Student Fee Reduction.

Dear Ms. Knight:

Pursuant to Elections Code section 9002, we request that the Attorney General prepare a title and summary of the attached measure. The text of the measure, a check for \$200.00, and the addresses at which we are registered to vote are enclosed. Please return a filed stamped copy of the initiative in the enclosed self-addressed envelope.

Please direct all correspondence and inquiries regarding this measure to:

Eugene Hill
Olson Hagel & Fishburn, LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814
Phone: (916) 442-2952
Fax: (916) 442-1280

Sincerely,

Carl Friedlander

Sandra Serrano

Dennis Smith

SECTION 1. Title

This measure shall be known and may be cited as the "Community College Governance, Funding Stabilization, and Student Fee Reduction Act."

SECTION 2. Findings and Declarations of Purpose

The People of the State of California find and declare that:

1. California's community colleges enroll over 2.5 million students each year, providing opportunities for higher education and the skills to be competitive in California's workforce.
2. California's community colleges are affordable. Low student fees and financial aid have made community colleges a gateway to a better life for millions of Californians.
3. Business leaders call California's community colleges a vital component of our state's workforce development, contributing to a healthy economy.
4. The state can fund community college enrollment growth without raising taxes or taking funds from K-12 schools. A dual-funding mechanism under Proposition 98 will achieve both.
5. This initiative will lower student fees and prevent fees from increasing at a rate faster than the growth in personal incomes.
6. Community colleges should be accountable to taxpayers through the election of local boards facing regular election.

Therefore, the People of the State of California hereby adopt the Community College Governance, Funding Stabilization, and Student Fee Reduction Act.

SECTION 3. Section 4 of Article VII of the California Constitution is amended to read:

SEC. 4. The following are exempt from civil service:

- (a) Officers and employees appointed or employed by the Legislature, either house, or legislative committees.
- (b) Officers and employees appointed or employed by councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof.
- (c) Officers elected by the people and a deputy and an employee selected by each elected officer.
- (d) Members of boards and commissions.
- (e) A deputy or employee selected by each board or commission either appointed by the Governor or authorized by statute.
- (f) State officers directly appointed by the Governor with or without the consent or confirmation of the Senate and the employees of the Governor's office, and the employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

(g) A deputy or employee selected by each officer, except members of boards and commissions, exempted under Section 4(f).

(h) Officers and employees of the University of California and the California State Colleges *University and executive officers of the Board of Governors of the California Community Colleges.*

(i) The teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction.

(j) Member, inmate, and patient help in state homes, charitable or correctional institutions, and state facilities for mentally ill or retarded persons.

(k) Members of the militia while engaged in military service.

(l) Officers and employees of district agricultural associations employed less than 6 months in a calendar year.

(m) In addition to positions exempted by other provisions of this section, the Attorney General may appoint or employ six deputies or employees, the Public Utilities Commission may appoint or employ one deputy or employee, and the Legislative Counsel may appoint or employ two deputies or employees.

SECTION 4. Section 17 is hereby added to Article IX of the California Constitution, to read:
Sec. 17

The Legislature shall provide for an independent public postsecondary education system of local community college districts as part of the Public School System.

SECTION 5. Section 18 is hereby added to Article IX of the California Constitution, to read:
Sec. 18

Each local community college district within the system shall be established in accordance with law and governed by a locally elected board whose functions shall be delineated in law.

SECTION 6. Section 19 is hereby added to Article IX of the California Constitution, to read:
Sec. 19

(a) The independent postsecondary education system of local community college districts shall be coordinated by a system office governed by a Board of Governors of the California Community Colleges composed of nineteen (19) members appointed by the Governor.

(b) The membership of the Board of Governors of the California Community Colleges shall include twelve public members, at least three of whom are, or have been, elected local community college district board members, who shall serve six year terms. In addition there shall be two current or former community college employees, three current or former community college faculty members, who shall serve three-year terms, and two community college students, who shall serve one-year terms.

(c) The Board of Governors of the California Community Colleges shall have full power to employ and set the compensation for executive officers of the system office exempt from civil service pursuant to Section 4 of Article VII, to determine expenditures within the system office budget established by law, to manage its civil service staff consistent with the laws of the State, to determine the utilization and allocation of its civil service classifications, to establish or modify classifications which are unique to the system office, and to determine the relationship of such unique classifications to classifications used elsewhere in civil service.

This subpart delineates the authority of the Board of Governors of the California Community Colleges over the wages, hours and other terms and conditions of employment of the employees of the system office conducting state operations. Nothing herein shall exempt the Board of Governors from obligations imposed by law with respect to other matters. Nor shall anything herein authorize the Board of Governors, or any Board officer or agent, to exercise authority with respect to the wages, hours or working conditions of employees of any community college district. In adopting this amendment, the People do not intend to establish the Board of Governors of the California Community Colleges as a "constitutional agency" as that term is used in the decisional law of this State, nor to divest any community college employee or labor organization, or any community college district or governing board, of any previously accrued rights, nor to affect the standards of judicial review of actions of the Board of Governors in regard to any matters other than its internal organization as modified herein.

(d) The work of the Board of Governors of the California Community Colleges at all times shall be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the governance and administration of the local community college districts and system.

(e) The Legislature shall provide through the annual budget act sufficient funding for state operations to provide accountability and leadership of the system of local community college districts.

SECTION 7. Section 8 of Article XVI of the California Constitution is amended to read:

SEC. 8. (a) From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.

(b) Commencing with the 1990-91 fiscal year, the moneys to be applied by the State for the support of school districts and community college districts shall be not less than the greater of the following amounts:

(1) The amount which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87.

(2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent.

(3) (A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues.

(B) In addition, an amount equal to one-half of one percent times the prior year total allocations to school districts and community colleges from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment.

(C) This paragraph (3) shall be operative only in a fiscal year in which the percentage growth in California per capita personal income in a fiscal year is greater than the percentage growth in per capita General Fund revenues plus one half of one percent.

(c) In any fiscal year, if the amount computed pursuant to paragraph (1) of subdivision (b) exceeds the amount computed pursuant to paragraph (2) of subdivision (b) by a difference that exceeds one and one-half percent of General Fund revenues, the amount in excess of one and one-half percent of General Fund revenues shall not be considered allocations to school districts and community colleges for purposes of computing the amount of state aid pursuant to paragraph (2) or 3 of subdivision (b) in the subsequent fiscal year.

(d) In any fiscal year in which school districts and community college districts are allocated funding pursuant to paragraph (3) of subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys which would have been appropriated pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of General Fund moneys which would have been appropriated pursuant to subdivision (b) had subdivision (b) not been suspended, and (2) the amount of General Fund moneys actually appropriated for school districts and community college districts in that fiscal year.

(e) The maintenance factor for school districts and community college districts determined pursuant to subdivision (d) shall be adjusted annually for changes in enrollment, and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B, until it has been allocated in full. The maintenance factor shall be allocated in a manner determined by the Legislature in each fiscal year in which the percentage growth in per capita General Fund revenues exceeds the percentage growth in California per capita personal income. The maintenance factor shall be reduced each year by the amount allocated by the Legislature in that fiscal year. The minimum maintenance factor amount to be allocated in a fiscal year shall be equal to the product of General Fund revenues from proceeds of taxes and one-half of the difference between the percentage growth in per capita General Fund revenues from proceeds of taxes and in California per capita personal income, not to exceed the total dollar amount of the maintenance factor.

(f) Commencing with the 2007-08 fiscal year, in determining the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes pursuant to paragraphs (b)(2) or (b)(3) or in the calculation of the maintenance factor created under subsection (d), the amount shall be separately calculated and appropriated by the Legislature to school districts and community college districts.

(g) For purposes of *calculating the total allocations to school districts pursuant to this section*, "changes in enrollment" shall be measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

(h) For the purposes of calculating the total allocations to community college districts pursuant to this section, "changes in enrollment" shall be measured by the change in the population served by the independent system of public community colleges and other appropriate factors determined pursuant to statute.

(i) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that the urgency statute may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

SECTION 8. *Section 41210 is added to the Education Code, to read:*

41210. Notwithstanding any other provision of law, "total allocations to school districts and community college districts" shall not include any of the following:

(a) Any program that was funded by the General Fund and Local Property Taxes in the 2004-05 fiscal year, but not considered as total allocations to school districts and community college districts for the purposes of this section in the 2004-05 fiscal year.

(b) Repayment of bonded indebtedness issued pursuant to the State General Obligation Bond Law (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code or its successors or issued after the effective date of this statute pursuant to Chapter 3.8 (commencing with Section 15820.50) of Part 10b of Division 3 of Title 2 of the Government Code or its successors.

SECTION 9. *Section 41211 is added to the Education Code, to read:*

41211. (a) "Changes in enrollment" pursuant to Section (h) of Article XVI of the Constitution shall be the greater of:

- (1) The percentage change in population from the second preceding year to the preceding year of the population of residents of the state between age seventeen (17) and age twenty-one (21), inclusive, or*
 - (2) The percentage change in population from the second preceding year to the preceding year of the population of residents of the state between age twenty-two (22) and age twenty-five (25), inclusive.*
- (b) The amount calculated for "changes in enrollment" in subsection (a) shall be increased by the positive difference of the percentage rate of unemployment of California residents from the third quarter of the preceding year less five (5) percent.*
- (c) If the amount calculated for "changes in enrollment" pursuant to subsections (a) and (b) is less than one (1) percent and the percentage of residents of the state enrolled in community colleges is less than the average percentage of residents enrolled in community colleges in the preceding twenty years, "changes in enrollment" shall be one (1) percent.*
- (d) Notwithstanding subsections (a) and (b), in no year shall "changes in enrollment" pursuant to subsection (h) of Article XVI of the Constitution exceed five (5) percent.*

SECTION 10. *Section 41212 is added to the Education Code, to read:*

41212. Notwithstanding any other provision of law, 10.46 percent of any funds allocated as repayment of the maintenance factor pursuant to subsection (e) of Section 8 of Article XVI of the

California Constitution existing on the effective date of this statute shall be allocated to community colleges.

SECTION 11. Section 41213 is added to the Education Code, to read:

41213. For the purposes of determining the amount required to be appropriated for community colleges pursuant to subsection (b) of Section 8 of Article XVI of the California Constitution, the amount calculated and appropriated for community colleges shall be the total General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes provided in the 2005-06 fiscal year, adjusted by subsection (b) of Section 8 of Article XVI of the California Constitution for each subsequent year until the effective date of this statute.

SECTION 12. Section 70901.5 of the Education Code is amended to read:

70901.5. (a) The ~~board of governors~~ *Board of Governors of the California Community Colleges* shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The ~~board of governors~~ *Board of Governors of the California Community Colleges* shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the ~~board of governors~~ *Board of Governors of the California Community Colleges* shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within ~~30~~ 60 days after adoption by the ~~board of governors~~ *Board of Governors of the California Community Colleges*, at least two-thirds of all *local district* governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the ~~board of governors~~ *Board of Governors of the California Community Colleges* shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the ~~board of governors~~ *Board of Governors of the California Community Colleges* decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

~~—(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.~~

~~—(7) (6) Any district or other interested party may propose a new regulation or challenge any existing regulation.~~

(b) Except as expressly provided by this section, and except as provided by resolution of the ~~board of governors~~ *Board of Governors of the California Community Colleges*, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the ~~board of governors~~ *Board of Governors of the California Community Colleges*.

SECTION 13. *Section 71000 of the Education Code is amended to read:*

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of ~~16~~ 19 voting members ~~and one nonvoting member~~, appointed by the Governor, as follows:

(a) ~~Twelve~~ Twelve public members, each appointed with the advice and consent of two-thirds of the membership of the Senate to six-year staggered terms. ~~Two~~ Three of these members shall be current or former elected members of local community college district governing boards, *appointed from a list of at least three persons submitted to the Governor by the statewide organization representing locally elected community college trustees recognized to participate in the consultation process established by subsection (e) of Section 70901.*

(b) (1) (A) ~~One~~ Two voting student members, *who shall serve one-year terms.* ~~and one nonvoting student member, who exercise their duties in accordance with the procedure set forth in paragraph (3).~~

(B) These students shall be enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of their terms, or until a replacement has been named. A student member shall be enrolled in a community college at least one semester prior to his or her appointment, and shall meet and maintain the minimum standards of scholarship prescribed for community college students.

(C) Each student member shall be appointed from a list of names of at least three persons submitted to the Governor by the ~~California Student Association of Community Colleges~~ *statewide organizations representing community college student governments recognized to participate in the consultation process established by subsection (e) of Section 70901.*

~~—(2) The term of office of one student member of the board shall commence on July 1 of an even-numbered year, and expire on June 30 two years thereafter. The term of office of the other student member of the board shall commence on July 1 of an odd-numbered year, and expire on June 30 two years thereafter. Notwithstanding paragraph (1), a student member who graduates~~

from his or her college on or after January 1 of the second year of his or her term of office may serve the remainder of the term.

~~—(3) During the first year of a student member's term, a student member shall be a member of the board and may attend all meetings of the board and its committees. At these meetings, a student member may fully participate in discussion and debate, but may not vote.~~

~~During the second year of a student member's term, a student member may exercise the same right to attend meetings of the board, and its committees, and shall have the same right to vote as the members appointed pursuant to subdivisions (a) and (c).~~

~~—(4) Notwithstanding paragraph (3), if a student member resigns from office or a vacancy is otherwise created in that office during the second year of a student member's term, the remaining student member shall immediately assume the office created by the vacancy and all of the participation privileges of the second-year student member, including the right to vote, for the remainder of that term of office.~~

(c) ~~Two~~ *Three* voting ~~current or former tenured~~ faculty members from a community college, who shall be appointed for ~~two three-year~~ terms. The Governor shall appoint ~~at least two of the each faculty members from a lists~~ *each faculty member from a list* of names of at least three persons furnished by the Academic Senate of the California Community Colleges. ~~Each seat designated as a tenured faculty member seat shall be filled by a tenured faculty member from a community college pursuant to this section and Section 71003.~~

(d) ~~One~~ *Two* voting ~~classified current or former~~ employees, who shall be appointed by the Governor for ~~three-year~~ terms ~~a two-year term~~. The Governor shall appoint ~~at least one of the employees the classified employee member~~ from a list of at least three ~~current classified employees~~ *persons* furnished by the exclusive representatives of classified employees of the California Community Colleges. ~~The Governor shall appoint one of the employees from a list of at least three persons submitted to the Governor by the statewide organization representing community college chief executive officers recognized to participate in the consultation process established by subsection (e) of Section 70901.~~

SECTION 14. *Section 71003 of the Education Code is amended to read:*

71003. (a) Except for the student members, the faculty members, and the ~~classified~~ employee members appointed by the Governor, any vacancy in an appointed position on the board shall be filled by appointment by the Governor, subject to confirmation by two-thirds of the membership of the Senate. A vacancy in the office of a student member, a faculty member, or ~~the classified~~ *an* employee member shall be filled by appointment by the Governor.

(b) ~~Except in the case of the student members,~~ the appointee to fill a vacancy shall hold office only for the balance of the unexpired term. *Vacancies in the student member positions shall be filled by an appointment by the Governor for a full one-year term.*

SECTION 15. *Section 71090.5 of the Education Code is amended to read:*

71090.5. ~~In addition to the position authorized by Pursuant to subdivision (c) of Section 4 of Article VII of the California Constitution, the Governor, with the recommendation of the board of governors~~ *the Board of Governors of the California Community Colleges* shall appoint a Chancellor and up to ~~six~~ *twelve* deputy chancellors, and vice chancellors and deputy vice chancellors, who shall be exempt from state civil service. The appointments shall not exceed an aggregate total of ~~six~~ *thirteen*, for ~~both~~ the positions *appointed pursuant to this section.* ~~of deputy and vice chancellor.~~

SECTION 16. *Section 76301 is added to the Education Code, to read:*

76301. (a) Notwithstanding any other provision of law, the fee prescribed by Section 76300 shall be twenty dollars (\$20) per unit per semester or the fee existing on the effective date of this statute, whichever is lower.

(b) The fee prescribed by Section 76300 and this section shall not be increased in any year by an amount exceeding the lesser of:

(1) the percentage change in per capita personal income of California residents from the second preceding year to the immediate preceding year, rounded down to the nearest whole dollar; or

(2) ten (10) percent.

(c) This section shall be effective with the first full fall academic term commencing at least sixty (60) days following the effective date of this statute.

SECTION 17. *Section 76301.5 is added to the Education Code, to read:*

76301.5 (a) The Legislature shall allocate to any community college district that does not receive general fund revenues through the community college apportionment because the district's local property tax and student fee revenue exceeds the general revenue calculated for the district in the annual budget act an amount equal to the total revenue that would have been generated by the district if the fee otherwise had been twenty-six dollars (\$26) per unit.

(b) This section shall only be effective in years in which the fee prescribed by this chapter is less than twenty-six dollars (\$26) per unit.

SECTION 18. GENERAL PROVISIONS

(a) Conflicting Measures:

(1) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure or measures relating to the same issue shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(2) If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

(b) Severability: The provisions of this act are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) Amendment: The provisions of Sections 8 through 15, inclusive, and Section 17 of this act may be amended by a statute that is passed by a vote of four-fifths of the membership of each house of the Legislature and signed by the Governor. All amendments to Sections 8 through 15, inclusive, of this act shall be to further the act and shall be consistent with its purposes. The provisions of subsection (a) of Section 16 of this act may be amended pursuant to subsection (b) of Section 16 of this act by a statute specifically and exclusively for that purpose that is passed by a vote of two-thirds of the membership of each house and signed by the Governor.